

2006 SEP -7 PM 12:05
CLAYTON MCMILLEN
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLAYTON MCMILLEN,)	CASE NO. 1:05 CV 1699
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
FRALEY & SCHILLING, INC.,)	
)	
Defendant.)	<u>MEMORANDUM OPINION AND</u>
)	<u>ORDER</u>

This matter is before the Court on Defendant's Motion for Summary Judgment (Document #30) and Plaintiff's Motion for Partial Summary Judgment (Document #36).

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant has petitioned the Court for summary judgment on all of Plaintiff's claims. Plaintiff seeks summary judgment on all of his claims, but asks this Court to set the matter for trial on the issue of damages only.

Summary judgment is appropriate when the court is satisfied "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The burden of showing the absence of any such "genuine issue" rests with the moving party:

[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any,' which it believes demonstrates the absence of a genuine issue of material fact.

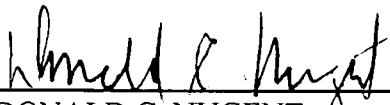
Celotex v. Catrett, 477 U.S. 317, 323 (1986) (citing FED. R. CIV. P. 56(c)). A fact is "material" only if its resolution will affect the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Determination of whether a factual issue is "genuine" requires consideration of the applicable evidentiary standards. The court will view the summary judgment motion in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In sum, proper summary judgment analysis entails "the threshold inquiry of determining whether there is the need for a trial-- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson*, 477 U.S. at 250.

CONCLUSION

Based upon a thorough review of the briefs submitted by the Parties, as well as the depositions and exhibits submitted in support thereof, genuine issues of material fact exist which make summary judgment inappropriate in this case. Accordingly, Defendant's Motion for Summary Judgment (Document #30) and Plaintiff's Motion for Partial Summary Judgment (Document #36) are hereby DENIED.

IT IS SO ORDERED.

DATED: September 7, 2006


DONALD C. NUGENT
United States District Judge